

MONTANA LEGISLATIVE HISTORY

Chapter 286 1992

Bill H 114 S _____

Original bill & history / c

H. Committee on Corrections Select Comm. S. Committee on Finance & Claims

Hearing Date(s) Jan 15 ✓ c

Hearing Date(s) Mar 20 ✓ c

Mar 10 ✓ c

Mar 21 ✓ c

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_____ c

_____ c

_____ c

Date Out _____ c

Did this bill originate in an interim committee? ✓ Yes _____ No

Committee _____

Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

HB 114 INTRODUCED BY MCCULLOCH

LC0221 DRAFTER: LANE

REVISE AND RECODIFY THE MONTANA YOUTH COURT ACT
BY REQUEST OF JUVENILE JUSTICE & MENTAL HEALTH STUDY
COMMISSION

12/30	INTRODUCED		
1/06	FIRST READING		
1/07	REFERRED TO CORRECTIONS SELECT COMMITTEE		
1/15	HEARING		
3/12	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/13	2ND READING PASSED	96	1
3/14	3RD READING PASSED	96	1
	TRANSMITTED TO SENATE		
3/15	FIRST READING		
3/15	REFERRED TO FINANCE & CLAIMS		
3/20	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED		
4/04	2ND READING CONCURRED	50	0
4/05	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
4/09	SIGNED BY SPEAKER		
4/11	SIGNED BY PRESIDENT		
4/14	TRANSMITTED TO GOVERNOR		
4/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 286		
	EFFECTIVE DATE: 10/01/97		

HB 115 INTRODUCED BY GRIMES, ET AL.

LC0373 DRAFTER: MALY

PROVIDE FOR VOLUNTARY WITHHOLDING OF TAXES FROM
UNEMPLOYMENT INSURANCE BENEFITS
BY REQUEST OF DEPARTMENT OF LABOR & INDUSTRY

12/30	INTRODUCED		
1/06	FIRST READING		
1/06	REFERRED TO BUSINESS & LABOR		
1/16	HEARING		
1/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/18	2ND READING PASSED	86	13
1/20	3RD READING PASSED	85	13
	TRANSMITTED TO SENATE		
1/21	FIRST READING		
1/21	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/04	HEARING		
2/08	COMMITTEE REPORT—BILL CONCURRED		
3/03	2ND READING CONCURRED	49	0
3/04	3RD READING CONCURRED	47	1
	RETURNED TO HOUSE		
3/09	SIGNED BY SPEAKER		
3/10	SIGNED BY PRESIDENT		
3/11	TRANSMITTED TO GOVERNOR		
3/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 60		
	EFFECTIVE DATE: 03/17/97—SECTIONS 1, 3-5 & 7-14		
	EFFECTIVE DATE: 10/01/97—SECTION 2		
	EFFECTIVE DATE: 01/01/98—SECTION 6		

HOUSE BILL NO. 114

INTRODUCED BY MCCULLOCH

BY REQUEST OF THE JUVENILE JUSTICE AND JUVENILE MENTAL HEALTH STUDY COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND RECODIFYING THE MONTANA YOUTH COURT ACT; CLARIFYING THAT SHORT-TERM DETENTION OF YOUTH, FOR UP TO 96 HOURS, EXCLUDES WEEKENDS AND LEGAL HOLIDAYS; AMENDING SECTIONS 7-6-501, 7-32-2244, 41-5-103, 41-5-208, 41-5-301, 41-5-303, 41-5-305, 41-5-306, 41-5-307, 41-5-311, 41-5-403, 41-5-502, 41-5-521, 41-5-522, 41-5-523, 41-5-525, 41-5-527, 41-5-530, 41-5-1004, 41-5-1104, 46-24-207, 52-5-129, AND 53-9-107, MCA; REPEALING SECTIONS 41-5-310 AND 41-5-312, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-6-501, MCA, is amended to read:

"7-6-501. Definitions. As used in 7-6-502 and this section, unless the context requires otherwise, the following definitions apply:

(1) "Detention" means the holding or temporary placement of a youth in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of his case.

(2) "Juvenile detention program" means services to provide for the lawful detention or shelter care of youth. The term includes:

(a) youth evaluations ordered by the court under 41-5-523, [section 29], or [section 36]; and

(b) programs for the transportation of youth to appropriate detention facilities or shelter care facilities.

(3) "Local government" has the same meaning as provided in 7-12-1103.

(4) "Shelter care" has the same meaning as provided in 41-5-103.

(5) "Youth" means an individual who is less than 18 years of age who is alleged to be a delinquent youth or youth in need of supervision as those terms are defined in 41-5-103."

1 **Section 2.** Section 7-32-2244, MCA, is amended to read:

2 **"7-32-2244. Detention of juveniles.** Juveniles may be held in a detention center only in accordance
3 with ~~41-5-301 through 41-5-307, 41-5-309, and 41-5-311~~ Title 41, chapter 5, part 3."

4
5 **Section 3.** Section 41-5-103, MCA, is amended to read:

6 **"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires
7 otherwise, the following definitions apply:

8 (1) "Adult" means an individual who is 18 years of age or older.

9 (2) "Agency" means any entity of state or local government authorized by law to be responsible
10 for the care or rehabilitation of youth.

11 (3) "Commit" means to transfer to legal custody.

12 (4) "Correctional facility" means a public or private residential facility used for the placement of
13 delinquent youth or individuals convicted of criminal offenses.

14 (5) "Court", when used without further qualification, means the youth court of the district court.

15 (6) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the
16 youth has been given but does not include a person who has only physical custody.

17 (7) "Delinquent youth" means a youth:

18 (a) who has committed an offense that, if committed by an adult, would constitute a criminal
19 offense; or

20 (b) who, having been placed on probation as a delinquent youth or a youth in need of supervision,
21 violates any condition of probation.

22 (8) "Department" means the department of corrections provided for in 2-15-2301.

23 (9) "Detention" means the holding or temporary placement of a youth in the youth's home under
24 home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued
25 custody of the youth at any time after the youth is taken into custody and before final disposition of the
26 youth's case.

27 (10) "Detention facility" means a physically restricting facility designed to prevent a youth from
28 departing at will. The term includes a youth detention facility, short-term detention center, and regional
29 detention facility.

30 (11) "Final disposition" means the implementation of a court order for the disposition or placement.

of a youth as provided in 41-5-523 or [section 29].

(12) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

~~(13) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.~~ "Guardian" means an adult:

(a) who is responsible for a youth and has reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(14) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(15) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(16) "Judge", when used without further qualification, means the judge of the youth court.

(17) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(18) "Mentally ill" means suffering from a mental disorder that has not resulted in self-inflicted injury or injury to others or the imminent threat of injury but that:

(a) has resulted in behavior that creates serious difficulty in protecting the person's life or health even with the available assistance of family, friends, or others;

(b) is treatable, with a reasonable prospect of success;

(c) has deprived the person of the capacity to make an informed decision concerning treatment;

1 (d) has resulted in the person's refusing or being unable to consent to voluntary admission for
2 treatment; and

3 (e) poses a significant risk of the person's becoming seriously mentally ill or will, if untreated,
4 predictably result in further serious deterioration in the mental condition of the person. Predictability may
5 be established by the patient's medical history.

6 ~~(18)~~(19) "Necessary parties" includes the youth, and the youth's parents, guardian, custodian, or
7 spouse.

8 ~~(19)~~(20) "Parent" means the natural or adoptive parent but does not include a person whose
9 parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth
10 unless the putative father's paternity is established by an adjudication or by other clear and convincing
11 proof.

12 ~~(20)~~(21) "Probable cause hearing" means the hearing provided for in ~~41-5-303~~ [section 12].

13 ~~(21)~~(22) "Regional detention facility" means a youth detention facility established and maintained
14 by two or more counties, as authorized in 41-5-811.

15 ~~(22)~~(23) "Restitution" means payments in cash to the victim or with services to the victim or the
16 general community when these payments are made pursuant to an informal adjustment, consent decree,
17 or other youth court order.

18 ~~(23)~~(24) "Secure detention facility" means any public or private facility that:

19 (a) is used for the temporary placement of youth or individuals accused or convicted of criminal
20 offenses; and

21 (b) is designed to physically restrict the movements and activities of youth or other individuals held
22 in lawful custody of the facility.

23 ~~(24)~~(25) "Serious juvenile offender" means a youth who has committed an offense that would be
24 considered a felony offense if committed by an adult and that is an offense against a person, an offense
25 against property, or an offense involving dangerous drugs.

26 ~~(25)~~(26) "Shelter care" means the temporary substitute care of youth in physically unrestricting
27 facilities.

28 ~~(26)~~(27) "Shelter care facility" means a facility used for the shelter care of youth. The term is
29 limited to the facilities enumerated in ~~41-5-306(1)~~ [section 20].

30 ~~(27)~~(28) "Short-term detention center" means a detention facility licensed by the department for

the temporary placement or care of youth, for a period not to exceed 96 hours excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility or shelter care facility.

~~(28)~~(29) "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills school in Miles City ~~and the Mountain View school in Helena.~~

~~(29)~~(30) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardian.

~~(30)~~(31) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

~~(31)~~(32) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court judge and probation officers.

~~(32)~~(33) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that:

- (a) is operated, administered, and staffed separately and independently of a jail; and
- (b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.

~~(33)~~(34) "Youth in need of care" has the meaning provided for in 41-3-102.

~~(34)~~(35) "Youth in need of supervision" means a youth who commits an offense prohibited by law that, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

- (a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;
- (b) continues to exhibit behavior beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or
- (c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of supervision."

Section 4. Section 41-5-208, MCA, is amended to read:

1 **"41-5-208. Transfer to district court after prosecution -- disposition in district court -- limitation**
 2 **on jurisdiction.** (1) To ensure continued compliance with the court's disposition under ~~41-5-523~~ [section
 3 29], at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age, the
 4 youth court judge may transfer jurisdiction to district court and order the transfer of supervisory
 5 responsibility and the youth's case files to the department.

6 (2) If a youth whose case has been transferred to district court under this section violates a
 7 disposition imposed under ~~41-5-523~~ [section 29], the district court may impose conditions as provided
 8 under 46-18-201 through 46-18-203.

9 (3) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the
 10 district court may order that the youth, after reaching 18 years of age:

11 (a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

12 (b) be supervised by the department.

13 (4) The district court's jurisdiction over a case transferred under this section terminates when the
 14 youth reaches 25 years of age."

15
 16 **Section 5. Section 41-5-301, MCA, is amended to read:**

17 **"41-5-301. Preliminary ~~investigation and disposition~~ inquiry -- referral of youth in need of care.**

18 (1) Whenever the court receives information from any agency or person, based upon reasonable grounds,
 19 that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to
 20 a court order or consent order, has violated the terms of an order, a probation officer shall make a
 21 preliminary inquiry into the matter.

22 ~~(2) The probation officer may:~~

23 ~~(a) require the presence of any person relevant to the inquiry;~~

24 ~~(b) request subpoenas from the judge to accomplish this purpose;~~

25 ~~(c) require investigation of the matter by any law enforcement agency or any other appropriate~~
 26 ~~state or local agency.~~

27 ~~(3)~~(2) If the probation officer determines that the facts indicate that the youth is a youth in need
 28 of care, the matter must be immediately referred to the department of public health and human services.

29 ~~(4) (a) The probation officer in the conduct of the preliminary inquiry shall:~~

30 ~~(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of~~

1 ~~Montana and the United States;~~

2 ~~(ii) determine whether the matter is within the jurisdiction of the court;~~

3 ~~(iii) determine, if the youth is in detention or shelter care, whether detention or shelter care should~~
4 ~~be continued based upon criteria set forth in 41-5-305.~~

5 ~~(b) Once relevant information is secured, the probation officer shall:~~

6 ~~(i) determine whether the interest of the public or the youth requires that further action be taken;~~

7 ~~(ii) terminate the inquiry upon the determination that no further action be taken; and~~

8 ~~(iii) release the youth immediately upon the determination that the filing of a petition is not~~
9 ~~authorized.~~

10 ~~(5) The probation officer upon determining that further action is required may:~~

11 ~~(a) provide counseling, refer the youth and the youth's parents to another agency providing~~
12 ~~appropriate services, or take any other action or make any informal adjustment that does not involve~~
13 ~~probation or detention;~~

14 ~~(b) provide for treatment or adjustment involving probation or other disposition authorized under~~
15 ~~41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents~~
16 ~~or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if~~
17 ~~the probation officer proceeds no further unless authorized by the county attorney; or~~

18 ~~(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent~~
19 ~~youth or a youth in need of supervision.~~

20 ~~(6) The county attorney may apply to the youth court for permission to file a petition charging a~~
21 ~~youth to be a delinquent youth or a youth in need of supervision. The application must be supported by~~
22 ~~evidence that the youth court may require. If it appears that there is probable cause to believe that the~~
23 ~~allegations of the petition are true, the youth court shall grant leave to file the petition.~~

24 ~~(7) A petition charging a youth held in detention must be filed within 7 working days from the date~~
25 ~~the youth was first taken into custody or the petition must be dismissed and the youth released unless good~~
26 ~~cause is shown to further detain the youth.~~

27 ~~(8) If a petition is not filed under this section, the complainant and victim, if any, must be informed~~
28 ~~by the probation officer of the action and the reasons for not filing and must be advised of the right to~~
29 ~~submit the matter to the county attorney for review. The county attorney, upon receiving a request for~~
30 ~~review, shall consider the facts, consult with the probation officer, and make the final decision as to~~

1 ~~whether a petition is filed."~~

2
3 **NEW SECTION. Section 6. Preliminary inquiry -- procedure.** (1) In conducting a preliminary inquiry
4 under 41-5-301, the probation officer shall:

5 (a) advise the youth of the youth's rights under this chapter and the constitutions of the state of
6 Montana and the United States;

7 (b) determine whether the matter is within the jurisdiction of the court;

8 (c) determine, if the youth is in detention or shelter care, whether detention or shelter care should
9 be continued based upon criteria set forth in 41-5-305 and [section 16].

10 (2) In conducting a preliminary inquiry, the probation officer may:

11 (a) require the presence of any person relevant to the inquiry;

12 (b) request subpoenas from the judge to accomplish this purpose;

13 (c) require investigation of the matter by any law enforcement agency or any other appropriate
14 state or local agency.

15
16 **NEW SECTION. Section 7. Preliminary inquiry -- determinations -- release.** Once relevant
17 information is secured after a preliminary inquiry under 41-5-301, the probation officer shall:

18 (1) determine whether the interest of the public or the youth requires that further action be taken;

19 (2) terminate the inquiry upon the determination that no further action be taken; and

20 (3) release the youth immediately upon the determination that the filing of a petition is not
21 authorized.

22
23 **NEW SECTION. Section 8. Preliminary inquiry -- dispositions available to probation officer.** Upon
24 determining that further action is required after a preliminary inquiry under 41-5-301, the probation officer
25 may:

26 (1) arrange informal disposition as provided in [section 9]; or

27 (2) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent
28 youth or a youth in need of supervision.

29
30 **NEW SECTION. Section 9. Informal disposition.** After a preliminary inquiry under 41-5-301, the

1 probation officer upon determining that further action is required and that referral to the county attorney
2 is not required may:

3 (1) provide counseling, refer the youth and the youth's parents to another agency providing
4 appropriate services, or take any other action or make any informal adjustment that does not involve
5 probation or detention; or

6 (2) provide for treatment or adjustment involving probation or other disposition authorized under
7 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents
8 or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if
9 the probation officer proceeds no further unless authorized by the county attorney.

10
11 **NEW SECTION. Section 10. Petition -- county attorney -- procedure -- release from custody.** (1)

12 The county attorney may apply to the youth court for permission to file a petition charging a youth to be
13 a delinquent youth or a youth in need of supervision. The application must be supported by evidence that
14 the youth court may require. If it appears that there is probable cause to believe that the allegations of the
15 petition are true, the youth court shall grant leave to file the petition.

16 (2) A petition charging a youth held in detention must be filed within 7 working days from the date
17 the youth was first taken into custody or the petition must be dismissed and the youth released unless good
18 cause is shown to further detain the youth.

19 (3) If a petition is not filed under this section, the complainant and victim, if any, must be informed
20 by the probation officer of the action and the reasons for not filing and must be advised of the right to
21 submit the matter to the county attorney for review. The county attorney, upon receiving a request for
22 review, shall consider the facts, consult with the probation officer, and make the final decision as to
23 whether a petition is filed.

24
25 **Section 11.** Section 41-5-303, MCA, is amended to read:

26 **"41-5-303. Rights of youth taken into custody -- questioning ~~hearing for probable cause~~**
27 **~~detention~~ -- waiver of rights.** (1) When a youth is taken into custody for questioning upon a matter that
28 could result in a petition alleging that the youth is either a delinquent youth or a youth in need of
29 supervision, the following requirements must be met:

30 (a) The youth must be advised of ~~his~~ the youth's right against self-incrimination and ~~his~~ the youth's

1 right to counsel.

2 ~~(b) The youth may waive these rights under the following situations:~~

3 ~~(i) when the youth is 16 years of age or older, the youth may make an effective waiver;~~

4 ~~(ii) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they~~
5 ~~may make an effective waiver; and~~

6 ~~(iii) when the youth is under the age of 16 years and the youth and his parent or guardian do not~~
7 ~~agree, the youth may make an effective waiver only with advice of counsel.~~

8 ~~(e)(b)~~ The investigating officer, probation officer, or person assigned to give notice shall
9 immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into
10 custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents,
11 guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by
12 the youth must be notified.

13 (2) A youth may waive the rights listed in subsection (1) under the following situations:

14 (a) when the youth is 16 years of age or older, the youth may make an effective waiver;

15 (b) when the youth is under 16 years of age and the youth and the youth's parent or guardian
16 agree, they may make an effective waiver; or

17 (c) when the youth is under 16 years of age and the youth and the youth's parent or guardian do
18 not agree, the youth may make an effective waiver only with advice of counsel.

19 ~~(2) Unless a youth has been released, a hearing must be held within 24 hours after the youth is~~
20 ~~taken into custody, excluding weekends and legal holidays, to determine whether there is probable cause~~
21 ~~to believe that the youth is a delinquent youth or a youth in need of supervision.~~

22 ~~(3) The probable cause hearing required under subsection (2) may be held by the youth court, a~~
23 ~~justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided~~
24 ~~in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or~~
25 ~~a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the~~
26 ~~hearing.~~

27 ~~(4) At the probable cause hearing, the youth must be informed of his constitutional rights and his~~
28 ~~rights under this chapter.~~

29 ~~(5) A parent, guardian, or legal custodian of the youth may be held in contempt of court for failing~~
30 ~~to be present at or to participate in the probable cause hearing unless he:~~

1 ~~(a) cannot be located through diligent efforts of the investigating peace officer or peace officers;~~

2 ~~or~~

3 ~~(b) is excused by the court for good cause.~~

4 ~~(6) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-512.~~

5 ~~(7) If it is determined that there is probable cause to believe the youth is a delinquent youth or is~~

6 ~~a youth in need of supervision, the court having jurisdiction in the case shall determine whether the youth~~

7 ~~should be retained in custody. If the court determines that continued custody of the youth is necessary and~~

8 ~~if the youth meets the criteria in 41-5-305, the youth may be placed in a detention facility or shelter care~~

9 ~~facility as provided in 41-5-306 but may not be placed in a jail or other facility used for the confinement~~

10 ~~of adults accused or convicted of criminal offenses.~~

11 ~~(8) If probable cause is not found or if a probable cause hearing is not held within the time specified~~
12 ~~in subsection (2), the youth must be immediately released from custody."~~

13
14 **NEW SECTION. Section 12. Custody -- hearing for probable cause.** (1) When a youth is taken
15 into custody for questioning, a hearing to determine whether there is probable cause to believe the youth
16 is a delinquent youth or a youth in need of supervision must be held within 24 hours, excluding weekends
17 and legal holidays. A hearing is not required if the youth is released prior to the time of the required
18 hearing.

19 (2) The probable cause hearing required under subsection (1) may be held by the youth court, a
20 justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided
21 in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or
22 a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the
23 hearing.

24 (3) A probable cause hearing may be conducted by telephone if other means of conducting the
25 hearing are impractical. All written orders and findings of the court in a hearing conducted by telephone
26 must bear the name of the judge or magistrate presiding in the case and the hour and date the order or
27 findings were issued.

28
29 **NEW SECTION. Section 13. Custody -- hearing for probable cause -- procedure.** (1) At a probable
30 cause hearing held pursuant to [section 12], the youth must be informed of the youth's constitutional rights

and the youth's rights under this chapter.

(2) A parent, guardian, or custodian of the youth may be held in contempt of court for failing to be present at or to participate in the probable cause hearing unless the parent, guardian, or custodian:

(a) cannot be located through diligent efforts of the investigating peace officer or peace officers;

or

(b) is excused by the court for good cause.

(3) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-512.

NEW SECTION. Section 14. Custody -- hearing for probable cause -- determinations -- detention -- release. (1) If, at a probable cause hearing held pursuant to [section 12], it is determined that there is probable cause to believe the youth is a delinquent youth or a youth in need of supervision, the court having jurisdiction in the case shall determine whether the youth should be retained in custody. If the court determines that continued custody of the youth is necessary and if the youth meets the criteria in 41-5-305 or [section 16], the youth may be placed in a detention facility or shelter care facility as provided in [sections 18 through 21] but may not be placed in a jail or other facility used for the confinement of adults accused or convicted of criminal offenses.

(2) If probable cause is not found or if a probable cause hearing is not held within the time specified in [section 12], the youth must be immediately released from custody.

Section 15. Section 41-5-305, MCA, is amended to read:

"41-5-305. Criteria for placement of youth in secure detention facilities or shelter care facilities.

~~(1)~~ A youth may ~~not~~ be placed in a secure detention facility ~~unless~~ only if the youth:

~~(a)(1)~~ ~~he~~ has allegedly committed an act that if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;

~~(b)(2)~~ ~~he~~ is alleged to be a delinquent youth and:

~~(i)(a)~~ ~~he~~ has escaped from a correctional facility or secure detention facility;

~~(ii)(b)~~ ~~he~~ has violated a valid court order or an aftercare agreement;

~~(iii)(c)~~ ~~his~~ the youth's detention is required to protect persons or property;

~~(iv)(d)~~ ~~he~~ the youth has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

~~(v)(e)~~ there are not adequate assurances that ~~he~~ the youth will appear for court when required; or

~~(vi)(f)~~ ~~he~~ the youth meets additional criteria for secure detention established by the youth court in the judicial district that has current jurisdiction over ~~him~~ the youth; or

~~(e)(3)~~ ~~he~~ has been adjudicated delinquent and is awaiting final disposition of ~~his~~ the youth's case.

~~(2) A youth may not be placed in a shelter care facility unless:~~

~~(a) the youth and his family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;~~

~~(b) the youth needs to be protected from physical or emotional harm;~~

~~(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;~~

~~(d) shelter care is necessary to assess the youth and his environment;~~

~~(e) shelter care is necessary to provide adequate time for case planning and disposition; or~~

~~(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family."~~

NEW SECTION. Section 16. Criteria for placement of youth in shelter care facilities. A youth may be placed in a shelter care facility only if:

(1) the youth and the youth's family need shelter care to address their problematic situation and it is not possible for the youth to remain at home;

(2) the youth needs to be protected from physical or emotional harm;

(3) the youth needs to be deterred or prevented from immediate repetition of troubling behavior;

(4) shelter care is necessary to assess the youth and the youth's environment;

(5) shelter care is necessary to provide adequate time for case planning and disposition; or

(6) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.

Section 17. Section 41-5-306, MCA, is amended to read:

"41-5-306. ~~Place of shelter care or detention~~ Limitation on placement of youth in need of care.

~~(1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:~~

~~(a) in a licensed youth foster home as defined in 41-3-1102;~~

~~(b) in a facility operated by a licensed child welfare agency;~~

~~(c) in a licensed youth group home as defined in 41-3-1102; or~~

~~(d) under home arrest, either in the youth's own home or in one of the facilities described in subsections (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10.~~

(2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in subsection (1) shelter care, as provided in [section 20], and may not be placed in a jail or other facility intended or used for the confinement of adults accused or convicted of criminal offenses.

~~(3) After a probable cause hearing provided for in 41-5-302, a youth alleged to be a delinquent youth may be placed only:~~

~~(a) in the facilities described in subsection (1);~~

~~(b) under home arrest as provided in subsection (1);~~

~~(c) in a short term detention center;~~

~~(d) in a youth detention facility; or~~

~~(e) in a community youth court program."~~

NEW SECTION. Section 18. Limitation on placement of youth in need of supervision. (1) After a probable cause hearing provided for in [section 12], a youth alleged to be a youth in need of supervision may be placed only in shelter care, as provided in [section 20].

(2) A youth alleged or found to be a youth in need of supervision may not be placed in a jail, secure detention facility, or correctional facility.

NEW SECTION. Section 19. Limitation on placement of delinquent youth. After a probable cause hearing provided for in [section 12], a youth alleged to be a delinquent youth may be placed only:

(1) in shelter care, in the facilities described in [section 20];

(2) under home arrest as provided in [section 20];

(3) in detention, as provided in [section 21]; or

(4) in a community youth court program.

NEW SECTION. Section 20. Place of shelter care. Placement in shelter care means placement in one of the following:

- 1 (1) in a licensed youth foster home as defined in 41-3-1102;
- 2 (2) in a facility operated by a licensed child welfare agency;
- 3 (3) in a licensed youth group home as defined in 41-3-1102; or
- 4 (4) under home arrest as provided in Title 46, chapter 18, part 10, either in the youth's own home
- 5 or in one of the facilities described in subsections (1) through (3).

6

7 **NEW SECTION. Section 21. Place of detention.** Placement in detention means placement in one

8 of the following facilities:

- 9 (1) a short-term detention center; or
- 10 (2) a youth detention facility, including a regional detention facility.

11

12 **Section 22.** Section 41-5-307, MCA, is amended to read:

13 **"41-5-307. Release ~~or delivery~~ from custody -- detention -- shelter care.** (1) Whenever a peace

14 officer believes, on reasonable grounds, that a youth can be released to a responsible person ~~who has~~

15 ~~custody of the youth, then~~ the peace officer may release the youth to that person upon receiving a written

16 promise from the person to bring the youth before the probation officer at a time and place specified in the

17 written promise, or a peace officer may release the youth under any other reasonable circumstances.

18 (2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained,

19 the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide

20 the probation officer with a written report of ~~his~~ the peace officer's reasons for holding the youth in

21 detention. If it is necessary to hold the youth pending appearance before the youth court, then the youth

22 must be held in a place of detention, as provided in [section 21], that is approved by the youth court.

23 (3) If the peace officer believes that the youth must be sheltered, the peace officer shall notify the

24 probation officer immediately and shall provide a written report of ~~his~~ the peace officer's reasons for placing

25 the youth in shelter care. If the youth is then held, the youth must be placed in a shelter care facility

26 approved by the youth court."

27

28 **Section 23.** Section 41-5-311, MCA, is amended to read:

29 **"41-5-311. Youth not to be detained in jail -- exceptions -- time limitations.** (1) A youth may not

30 be detained or otherwise placed in a jail or other adult detention facility except as provided in 41-5-206 and

1 this section.

2 (2) A youth who has allegedly committed an offense that if committed by an adult would constitute
3 a criminal offense may be temporarily detained in a jail or other adult detention facility for a period not to
4 exceed:

5 (a) 6 hours, but in no case overnight, for the purpose of identification, processing, or transfer of
6 the youth to an appropriate detention facility or shelter care facility; or

7 (b) 24 hours, excluding weekends and legal holidays, if the youth is awaiting a probable cause
8 hearing pursuant to ~~41-5-303~~ section 12.

9 (3) The exception provided for in subsection (2)(b) applies only if:

10 (a) the court having jurisdiction over the youth is outside a metropolitan statistical area;

11 (b) alternative facilities are not available or alternative facilities do not provide adequate security;
12 and

13 (c) the youth is kept in an area that provides physical as well as sight and sound separation from
14 adults accused or convicted of criminal offenses.

15 (4) Whenever, despite all good faith efforts to comply with the time limitations specified in
16 subsection (2), the limitations are exceeded, this circumstance does not serve as grounds for dismissal of
17 the case nor does this circumstance constitute a defense in a subsequent delinquency or criminal
18 proceeding."

19
20 **Section 24.** Section 41-5-403, MCA, is amended to read:

21 **"41-5-403. Disposition permitted under informal adjustment -- contributions by parents or**
22 **guardians for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

23 (a) probation;

24 (b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and
25 as determined by the department;

26 (c) placement of the youth with a private agency responsible for the care and rehabilitation of the
27 youth as determined by the department;

28 (d) restitution upon approval of the youth court judge and subject to the provisions of [section 37];

29 (e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10.

30 ~~(2) In determining whether restitution is appropriate in a particular case, the following factors may~~

1 ~~be considered in addition to any other evidence;~~

2 ~~(a) age of the youth;~~

3 ~~(b) ability of the youth to pay;~~

4 ~~(c) ability of the parents, legal guardian, or persons contributing to the youth's delinquency or need~~
5 ~~for supervision to pay;~~

6 ~~(d) amount of damage to the victim; and~~

7 ~~(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand~~
8 ~~any loss may not be considered in any case.~~

9 ~~(3)(2)~~ If the youth violates an aftercare agreement as provided for in 52-5-126, the youth must be
10 returned to the court for further disposition. A youth may not be placed in a state youth correctional facility
11 under informal adjustment.

12 ~~(4)(3)~~ If the youth is placed in substitute care requiring payment by the department, the court, as
13 provided in [section 35], shall examine the financial ability of the youth's parents or guardians to pay a
14 contribution covering all or part of the costs for the care, placement, and treatment of the youth, including
15 the costs of necessary medical, dental, and other health care.

16 ~~(5)(4)~~ If the court determines that the youth's parents or guardians are financially able to pay a
17 contribution as provided in subsection ~~(4)(3)~~, the court shall order the youth's parents or guardians to pay
18 an amount based on the uniform child support guidelines adopted by the department of public health and
19 human services pursuant to 40-5-209.

20 ~~(6) (a) Except as provided in subsection (6)(b), contributions ordered under this section and each~~
21 ~~modification of an existing order are enforceable by immediate or delinquency income withholding, or both,~~
22 ~~under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is~~
23 ~~nevertheless subject to withholding for the payment of the contribution without need for an amendment~~
24 ~~of the support order or for any further action by the court.~~

25 ~~(b) A court ordered exception from contributions under this section must be in writing and be~~
26 ~~included in the order. An exception from the immediate income withholding requirement may be granted~~
27 ~~if the court finds there is:~~

28 ~~(i) good cause not to require immediate income withholding; or~~

29 ~~(iii) an alternative arrangement between the department and the person who is ordered to pay~~
30 ~~contributions.~~

1 ~~(e) A finding of good cause not to require immediate income withholding must, at a minimum, be~~
2 ~~based upon:~~

3 ~~(i) a written determination and explanation by the court of the reasons why the implementation of~~
4 ~~immediate income withholding is not in the best interests of the child; and~~

5 ~~(ii) proof of timely payment of previously ordered support in cases involving modification of~~
6 ~~contributions ordered under this section.~~

7 ~~(d) An alternative arrangement must:~~

8 ~~(i) provide sufficient security to ensure compliance with the arrangement;~~

9 ~~(ii) be in writing and be signed by a representative of the department and the person required to~~
10 ~~make contributions; and~~

11 ~~(iii) if approved by the court, be entered into the record of the proceeding.~~

12 ~~(7) (a) If the court orders the payment of contributions under this section, the department shall~~
13 ~~apply to the department of public health and human services for support enforcement services pursuant~~
14 ~~to Title IV-D of the Social Security Act.~~

15 ~~(b) The department of public health and human services may collect and enforce a contribution~~
16 ~~order under this section by any means available under law, including the remedies provided for in Title 40,~~
17 ~~chapter 5, parts 2 and 4."~~

18
19 **Section 25.** Section 41-5-502, MCA, is amended to read:

20 **"41-5-502. Summons.** (1) After a petition has been filed, summons must be served directly to:

21 (a) the youth;

22 (b) ~~his~~ the youth's parent or parents having actual custody of the youth or ~~his~~ the youth's guardian
23 or custodian, as the case may be; and

24 (c) other persons as the court may direct.

25 (2) The summons must:

26 (a) require the parties to whom it is directed to appear personally before the court at the time fixed
27 by the summons to answer the allegations of the petition;

28 (b) advise the parties of their right to counsel under the Montana Youth Court Act; and

29 (c) have attached to it a copy of the petition.

30 (3) The court may endorse upon the summons an order directing the person or persons having the

physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take ~~him~~ the youth to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having legal custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and postdetention proceedings.

(5) If ~~any~~ a youth is placed in detention or shelter care under any provision of this chapter pending an adjudication, the court shall, as soon as practicable, conduct a probable cause hearing as provided in ~~41-5-303~~ [section 12].

(6) The youth court judge may also admit the youth to bail in accordance with Title 46, chapter 9."

Section 26. Section 41-5-521, MCA, is amended to read:

"41-5-521. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth or the youth's parent, guardian, or attorney may demand a jury trial on the contested offenses. In the absence of a demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing must be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing must be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function is to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing must be recorded verbatim by whatever means the court considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public may not be excluded, except that in the court's discretion, the general public may be excluded if the petition ~~does not allege~~ alleges that the youth is ~~delinquent~~ in need of supervision.

(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this chapter.

(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and in Rule 47, M.R.Civ.P."

Section 27. Section 41-5-522, MCA, is amended to read:

"41-5-522. Dispositional hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians to pay a contribution for the cost of care, commitment, and treatment of the youth as required in ~~41-5-523~~ [section 35].

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, the youth's family, the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination must be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the court. The results of the examination must be included in the social summary or predisposition report. The youth or the youth's parents, guardian, or counsel has the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and has the right to cross-examine the parties at the dispositional hearing.

(3) Defense counsel must be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing must be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. The evidence must include but is not limited to the social

summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth or the youth's parents or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

~~(6) In determining whether restitution, as authorized by 41-5-523, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:~~

~~(a) age of the youth;~~

~~(b) ability of the youth to pay;~~

~~(c) ability of the parents, legal guardian, or those that contributed to the youth's delinquency or need for supervision to pay;~~

~~(d) amount of damage to the victim; and~~

~~(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand any loss may not be considered in any case."~~

Section 28. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition of youth in need of supervision ~~— sentence to correctional facility —~~
~~commitment to department — placement and evaluation of youth --~~ restrictions. (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making one or more of the following dispositions:

~~(a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);~~

~~(b) (1) place the youth on probation; The youth court retains jurisdiction in a disposition under this subsection.~~

~~(c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. The sentencing judge may not place limitations on the release unless recommended by the youth placement committee.~~

~~(d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and 46-23-506;~~

1 ~~(e)~~(2) place the youth in an in-state residence that ensures that the youth is accountable, provides
2 for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider
3 placement recommendations from the youth placement committee. The judge may not place the youth in
4 an in-state residence unless the department informs the judge that resources are available for placement
5 of the youth at that residence.

6 ~~(f)~~(3)(a) commit the youth to the department. In an order committing a youth to the department,

7 ~~(i)~~ the court shall determine whether continuation in the youth's own home would be contrary to
8 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need
9 for removal of the youth from the youth's home;

10 (b) The department may not place a youth in need of supervision in a state youth correctional
11 facility.

12 ~~(iii) in the case of a delinquent youth who is determined by the court to be a serious juvenile~~
13 ~~offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge~~
14 ~~finds that the placement is necessary for the protection of the public. The court may order the department~~
15 ~~to notify the court within 5 working days before the proposed release of a youth from a youth correctional~~
16 ~~facility. Once a youth is committed to the department for placement in a state youth correctional facility,~~
17 ~~the department is responsible for determining an appropriate date of release into an appropriate placement.~~

18 ~~(g)~~(4) order restitution by the youth or the youth's parents or guardians, subject to the provisions
19 of [section 37];

20 ~~(h)~~(5) impose a fine as authorized by law if the violation alleged would constitute a criminal offense
21 if committed by an adult;

22 ~~(i)~~(6) require the performance of community service;

23 ~~(j)~~(7) require the youth, the youth's parents or guardians, or the persons having legal custody of
24 the youth to receive counseling services;

25 ~~(k)~~(8) require the medical and psychological evaluation of the youth, the youth's parents or
26 guardians, or the persons having legal custody of the youth;

27 ~~(l)~~(9) require the parents, guardians, or other persons having legal custody of the youth to furnish
28 services the court may designate;

29 ~~(m)~~(10) subject to the provisions of subsection (11), order further care, treatment, evaluation, or
30 relief that the court considers beneficial to the youth and the community and that does not obligate funding

from the department for services outside the state of Montana without the department's approval, ~~except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(f), place a youth in a residential treatment facility;~~

~~(11) subject to the provisions of [section 31],~~ commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. ~~The youth is entitled to all rights provided by 53-21-114 through 53-21-119;~~

~~(ii) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed or sentenced to a state youth correctional facility.~~

~~(iii) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.~~

~~(12)~~ place the youth under home arrest as provided in Title 46, chapter 18, part 10.

~~(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:~~

~~(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.~~

~~(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.~~

~~(c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.~~

~~(3) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:~~

~~(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;~~

~~(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;~~

~~(c) submitting an application to a facility in which the youth may be placed; and~~

~~(d) case management of the youth.~~

~~(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.~~

~~(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.~~

~~(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.~~

~~(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.~~

~~(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.~~

~~(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical predisposition, or other reports and information pertinent to the care and treatment of the youth.~~

~~(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.~~

~~(11) If the court determines that the youth's parents or guardians are financially able to pay a~~

1 ~~contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay~~
2 ~~an amount based on the uniform child support guidelines adopted by the department of public health and~~
3 ~~human services pursuant to 40-5-200.~~

4 ~~(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each~~
5 ~~modification of an existing order are enforceable by immediate or delinquency income withholding, or both,~~
6 ~~under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is~~
7 ~~nevertheless subject to withholding for the payment of the contribution without need for an amendment~~
8 ~~of the support order or for any further action by the court.~~

9 ~~(b) A court ordered exception from contributions under this section must be in writing and be~~
10 ~~included in the order. An exception from the immediate income withholding requirement may be granted~~
11 ~~if the court finds there is:~~

12 ~~(i) good cause not to require immediate income withholding; or~~

13 ~~(ii) an alternative arrangement between the department and the person who is ordered to pay~~
14 ~~contributions.~~

15 ~~(c) A finding of good cause not to require immediate income withholding must, at a minimum, be~~
16 ~~based upon:~~

17 ~~(i) a written determination and explanation by the court of the reasons why the implementation of~~
18 ~~immediate income withholding is not in the best interests of the youth; and~~

19 ~~(ii) proof of timely payment of previously ordered support in cases involving modification of~~
20 ~~contributions ordered under this section.~~

21 ~~(d) An alternative arrangement must:~~

22 ~~(i) provide sufficient security to ensure compliance with the arrangement;~~

23 ~~(ii) be in writing and be signed by a representative of the department and the person required to~~
24 ~~make contributions; and~~

25 ~~(iii) if approved by the court, be entered into the record of the proceeding.~~

26 ~~(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,~~
27 ~~the court may modify its order for the payment of contributions required under subsection (11).~~

28 ~~(14) (a) If the court orders the payment of contributions under this section, the department shall~~
29 ~~apply to the department of public health and human services for support enforcement services pursuant~~
30 ~~to Title IV D of the Social Security Act.~~

~~(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."~~

NEW SECTION. Section 29. Disposition of delinquent youth -- restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-523;

(b) subject to 41-5-523(3)(b), [sections 30(1), 31(2)], and subsection (2) of this section, sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. The sentencing judge may not place limitations on the release unless recommended by the youth placement committee.

(c) require a youth found to be delinquent, as the result of the commission of an offense that would be a violation of 45-5-501 through 45-5-504, 45-5-507, or 45-5-511 if committed by an adult, to register as a sex offender pursuant to 46-18-254 and 46-23-506. The youth court retains jurisdiction in a disposition under this subsection.

(d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(2) The youth court may not order placement of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.

NEW SECTION. Section 30. Disposition -- commitment to department -- restrictions on placement. When a youth is committed to the department, the department shall determine the appropriate placement

and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the limitations contained in 41-5-523(3)(b) and the following limitations:

(1) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(2) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) The department may not place a youth adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult in a state youth correctional facility.

NEW SECTION. Section 31. Disposition -- finding of mentally ill or seriously mentally ill -- rights -- limitation on placement. (1) A youth who is found to be seriously mentally ill as defined in 53-21-102 is entitled to all rights provided by 53-21-114 through 53-21-119.

(2) A youth who, prior to placement or sentencing, is found to be mentally ill, as defined in 41-5-103, or seriously mentally ill, as defined in 53-21-102, may not be committed or sentenced to a state youth correctional facility.

(3) A youth who is found to be mentally ill or seriously mentally ill after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

NEW SECTION. Section 32. Disposition -- commitment to department -- supervision. (1) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department.

(2) A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that

1 is making the placement recommendation to determine an appropriate placement for the youth;

2 (b) securing approval for payment of special education costs from the youth's school district of
3 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

4 (c) submitting an application to a facility in which the youth may be placed; and

5 (d) case management of the youth.
6

7 **NEW SECTION. Section 33. Disposition -- commitment to department -- transfer of records.**

8 Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment
9 copies of medical reports, social history material, education records, and any other clinical, predisposition,
10 or other reports and information pertinent to the care and treatment of the youth.
11

12 **NEW SECTION. Section 34. Modification of court orders -- notice to department -- hearing.** (1)

13 An order of the court may be modified at any time.

14 (2) In the case of a youth committed to the department, an order pertaining to the youth may be
15 modified only upon notice to the department and subsequent hearing.
16

17 **NEW SECTION. Section 35. Contribution for costs -- order for contribution -- exceptions --**

18 **collection.** (1) If a youth is committed to the department, the court shall examine the financial ability of
19 the youth's parents or guardians to pay a contribution covering all or part of the costs for the care,
20 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health
21 care.

22 (2) If the court determines that the youth's parents or guardians are financially able to pay a
23 contribution as provided in subsection (1), the court shall order the youth's parents or guardians to pay an
24 amount based on the uniform child support guidelines adopted by the department of public health and
25 human services pursuant to 40-5-209.

26 (3) (a) Except as provided in subsection (3)(b), contributions ordered under 41-5-403 and this
27 section and each modification of an existing order are enforceable by immediate or delinquency income
28 withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with
29 this section is nevertheless subject to withholding for the payment of the contribution without need for an
30 amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under 41-5-403 or this section must be in writing and must be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(4) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under 41-5-403 or subsection (2).

(5) (a) If the court orders the payment of contributions under 41-5-403 or this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under 41-5-403 or this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

NEW SECTION. Section 36. Disposition -- medical or psychological evaluation of youth -- costs.

(1) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. Except as provided in subsection (2), the county determined by the court as the residence of

1 the youth is responsible for the cost of the evaluation. A county may contract with the department or other
2 public or private agencies to obtain evaluation services ordered by the court.

3 (2) The youth court shall determine the financial ability of the youth's parents or guardians to pay
4 the cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court
5 shall order the youth's parents or guardians to pay all or part of the cost of the evaluation.

6 (3) The youth court may not order evaluation of a youth at a state youth correctional facility unless
7 the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable
8 to district court under 41-5-206.

9 (4) An evaluation of a youth may not be performed at the Montana state hospital unless the youth
10 is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

11
12 **NEW SECTION. Section 37. Restitution.** (1) In determining whether restitution, as authorized by
13 41-5-403 and 41-5-523, is appropriate in a particular case, the following factors may be considered in
14 addition to any other evidence:

- 15 (a) age of the youth;
16 (b) ability of the youth to pay;
17 (c) ability of the parents, legal guardian, or those that contributed to the youth's delinquency or
18 need for supervision to pay;
19 (d) amount of damage to the victim; and
20 (e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand
21 any loss may not be considered in any case.

22 (2) Restitution paid by a youth or a youth's parents or guardians is subject to subrogation as
23 provided in 46-18-248.

24
25 **Section 38.** Section 41-5-525, MCA, is amended to read:

26 **"41-5-525. Youth placement committees -- composition.** (1) In each judicial district, the
27 department shall establish a youth placement committee for the purposes of:

- 28 (a) recommending an appropriate placement of a youth referred to the department under 41-5-403;
29 or
30 (b) recommending available community services or alternative placements whenever a change is

1 required in the placement of a youth who is currently in the custody of the department under 41-5-523 or
2 [section 29]. However, the committee may not substitute its judgment for that of the superintendent of a
3 state youth correctional facility regarding the discharge of a youth from the facility.

4 (2) The committee consists of not less than five members and must include persons who are
5 knowledgeable about the youth, treatment and placement options, and other resources appropriate to
6 address the needs of the youth. Members may include:

7 (a) two representatives of the department;

8 (b) a representative of the department of public health and human services;

9 (c) either the chief probation officer or the youth's probation officer;

10 (d) a mental health professional;

11 (e) a representative of a school district located within the boundaries of the judicial district;

12 (f) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable
13 about Indian culture and family matters;

14 (g) a parent or guardian; and

15 (h) a youth services provider.

16 (3) Committee members serve without compensation.

17 (4) Notwithstanding the provisions of 41-5-527, the committee may be convened by the
18 department or the probation officer of the youth court."
19

20 **Section 39.** Section 41-5-527, MCA, is amended to read:

21 **"41-5-527. Youth placement committee to submit recommendation to department -- acceptance**
22 **or rejection of recommendation by department.** (1) Prior to commitment of a youth to the department
23 pursuant to 41-5-523 or [section 29], a youth placement committee must be convened. The committee
24 shall submit in writing to the department and to the youth court judge its primary and alternative
25 recommendations for placement of the youth.

26 (2) If the department accepts either of the committee's recommendations, it shall promptly notify
27 the committee in writing.

28 (3) If the department rejects both of the committee's recommendations, it shall promptly notify the
29 committee in writing of the reasons for rejecting the recommendations and shall make an appropriate
30 placement for the youth.

(4) Within 72 hours after making a decision on a placement or change of placement, the department shall notify the youth court of the decision and of the placement or change of placement."

Section 40. Section 41-5-530, MCA, is amended to read:

"41-5-530. Parental contributions account -- allocation of proceeds. (1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under 41-3-406, 41-5-403, ~~41-5-523~~ [section 35], or 41-5-524 must be deposited in the account.

(3) All money in the account, except any amount required to be returned to federal or county sources, is allocated to the department of public health and human services to carry out its duties under 52-1-103."

Section 41. Section 41-5-1004, MCA, is amended to read:

"41-5-1004. Distribution of grants -- limitation of funding -- restrictions on use. (1) The board shall award grants on an equitable basis, giving preference to services that will be used on a regional basis.

(2) The board shall award grants to eligible counties:

(a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure detention; or

(b) on a matching basis in an amount not to exceed:

(i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to secure detention, except for shelter care. Shelter care must be paid as provided by law.

(ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention or shelter care facilities, including regional detention facilities.

(3) Based on funding available after the board has funded block grants under subsection (2), the board shall, in cases of extreme hardship in which the transfer of youth court cases to the adult system has placed considerable financial strain on a county's resources, award grants to eligible counties to fund up to 75% of the actual costs of secure detention of youth awaiting transfer. Hardship cases will be addressed at the end of the fiscal year and will be awarded by the board based upon a consideration of the applicant county's past 3 years' expenditures for youth detention and upon consideration of the particular case or cases that created the hardship expenditure for which the hardship grant is requested.

(4) Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost of evaluations must be paid as provided for in ~~41-5-523~~ [section 36]."

Section 42. Section 41-5-1104, MCA, is amended to read:

"41-5-1104. Disposition in extended jurisdiction prosecutions. (1) If a youth in an extended jurisdiction prosecution pleads guilty to or is found guilty of an offense described in 41-5-1102(1)(b), the court shall:

(a) impose one or more juvenile dispositions under ~~41-5-523~~ [section 29]; and

(b) impose an adult criminal sentence, the execution of which must be stayed on the condition that the youth not violate the provisions of the disposition order and not commit a new offense. If the youth violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed as provided in 41-5-1105.

(2) Except as provided in subsection (3), if a youth in an extended jurisdiction prosecution is convicted of an offense not described in 41-5-1102(1)(b), the court shall adjudicate the youth delinquent and order a disposition under ~~41-5-523~~ [section 29].

(3) If a youth in an extended jurisdiction prosecution pleads guilty to an offense not described in 41-5-1102(1)(b), the court may impose, with the youth's consent, a disposition provided under subsection (1)(b) of this section. If the youth does not consent to disposition under subsection (1)(b), the court shall impose a disposition as provided under subsection (2)."

Section 43. Section 46-24-207, MCA, is amended to read:

"46-24-207. Victims and witnesses of juvenile felony offenses -- consultation -- notification of proceedings. (1) The attorney general shall ensure that the services and assistance that must be provided under this chapter to a victim or witness of a crime are also provided to the victim or witness of a juvenile felony offense.

(2) In a proceeding filed under Title 41, chapter 5, part ~~514~~ or 15, the county attorney or a designee shall consult with the victim of a juvenile felony offense or, in the case of a minor victim or a homicide victim, with the victim's family regarding the disposition of the case, including:

(a) a dismissal of the petition filed under 41-5-501;

(b) a reduction of the charge to misdemeanor;

- 1 (c) the release of the youth from detention or shelter care pending the adjudicatory hearing; and
2 (d) the disposition of the youth.

3 (3) (a) Whenever possible, a person described in subsection (3)(b) who provides the youth court
4 with a current address and telephone number must receive prompt advance notification of youth court case
5 proceedings, including:

- 6 (i) the filing of a petition under 41-5-501;
7 (ii) the release of the youth from detention or shelter care; and
8 (iii) proceedings in the adjudication of the petition, including, when applicable, entry of a consent
9 decree under 41-5-524, the setting of a date for the adjudicatory hearing under 41-5-521, the setting of
10 a date for the dispositional hearing under 41-5-522, the disposition made, and the release of the youth from
11 a youth correctional facility.

12 (b) A person entitled to notification under this subsection (3) must be a victim of a juvenile felony
13 offense, an adult relative of the victim if the victim is a minor, or an adult relative of a homicide victim.

14 (c) The court shall provide to the department the list of people entitled to notification under this
15 subsection (3), and the department is responsible to provide the notification.

16 (4) For purposes of this section, "juvenile felony offense" means an offense committed by a
17 juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense
18 for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103."

19
20 **Section 44.** Section 52-5-129, MCA, is amended to read:

21 **"52-5-129. Hearing on alleged violation of aftercare agreement -- right to appeal outcome. (1)**

22 When it is alleged by an aftercare counselor that a youth has violated the terms of the youth's aftercare
23 agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which
24 the youth is residing or is found within 10 days after notice has been served on the youth or the youth is
25 detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the
26 violation and, if so, whether the violation is of such a nature that the youth should be returned to the youth
27 correctional facility from which the youth was released or a different plan for treatment should be pursued
28 by the department of corrections.

29 (2) The youth, upon advice of an attorney, may waive the right to a hearing.

30 (3) With regard to this hearing, the youth must be given:

1 (a) written notice of the alleged violation of the aftercare agreement, including notice of the
2 purpose of the hearing;

3 (b) a disclosure of the evidence against the youth and the facts constituting the alleged violation;

4 (c) the opportunity to be heard in person and to present witnesses and documentary evidence to
5 controvert the evidence against the youth and to show that there are compelling reasons that justify or
6 mitigate the violation;

7 (d) the opportunity to have the ~~referee~~ hearings officer subpoena witnesses;

8 (e) the right to confront and cross-examine adverse witnesses;

9 (f) the right to be represented by an attorney;

10 (g) a record of the hearing; and

11 (h) notice that a written statement as to the evidence relied upon in reaching the final decision and
12 the reasons for the final decision will be provided by the ~~referee~~ hearings officer.

13 (4) The department shall appoint a ~~referee~~ hearings officer, who may not be an employee of the
14 department, to conduct the hearing. In the conduct of the hearing, the department may request the county
15 attorney's assistance as necessary. The department shall adopt rules necessary to effect a prompt and full
16 review.

17 (5) If the ~~referee~~ hearings officer finds, by a preponderance of the evidence, that the youth did in
18 fact commit the violation, the ~~referee~~ hearings officer shall make a recommendation to the department for
19 the placement of the youth. In making this recommendation, the ~~referee~~ hearings officer may consider
20 mitigating circumstances. Final approval rests with the department and must be made within 10 days of
21 the ~~referee's~~ hearings officer's recommendation.

22 (6) The youth may appeal from the decision at the hearing to the district court of the county in
23 which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the
24 department's decision. The youth may obtain a written transcript of the hearing from the department by
25 giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the
26 department to promptly certify to the court a record of all proceedings before the department and shall
27 proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the
28 department may not be altered except for abuse of discretion or manifest injustice.

29 (7) Pending the hearing on a violation and pending the department's decision, a youth may not be
30 detained except when the youth's detention or care is required to protect the person or property of the

1 youth or of others or the youth may abscond or be removed from the community. The department shall
2 determine the place and manner of detention and is responsible for the cost of the detention. Procedures
3 for taking into custody and detention of a youth charged with violation of the youth's aftercare agreement
4 are as provided in 41-5-303, 41-5-306, 41-5-311, ~~and 41-5-314~~, [sections 12 through 14], and [sections
5 18 through 21].

6 (8) If the decision is made to return the youth to the youth correctional facility from which the
7 youth was released and the youth appeals that decision, the youth shall await the outcome of the appeal
8 at the facility."

9
10 **Section 45.** Section 53-9-107, MCA, is amended to read:

11 **"53-9-107. Public inspection and disclosure of division's records.** (1) Except as provided in
12 subsections (2) and (3), the records the division maintains in its possession in the administration of this part
13 are open to public inspection and disclosure.

14 (2) Confidential criminal justice information obtained by the division is subject to the confidentiality
15 provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5. ~~Information~~
16 ~~regarding youth court proceedings obtained by the division is subject to the confidentiality provisions of~~
17 ~~Title 41, chapter 5, part 6.~~

18 (3) In assuring that the right of individual privacy so essential to the well-being of a free society
19 may not be infringed without the showing of a compelling state interest, the following public records of the
20 division are exempt from disclosure:

21 (a) information of a personal nature, such as personal, medical, or similar information, if the public
22 disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear
23 and convincing evidence requires disclosure in the particular instance. The party seeking disclosure ~~shall~~
24 ~~have~~ has the burden of showing that public disclosure would not constitute an unreasonable invasion of
25 privacy.

26 (b) any public records or information, the disclosure of which is prohibited by federal law or
27 regulations.

28 (4) If any public record of the division contains material ~~which~~ that is not exempt under subsection
29 (3), as well as material ~~which~~ that is exempt from disclosure, the division shall separate the exempt and
30 nonexempt and make the nonexempt material available for examination."

1 **NEW SECTION.** **Section 46. Repealer.** Sections 41-5-310 and 41-5-312, MCA, are repealed.

2
3 **NEW SECTION.** **Section 47. Code commissioner instructions.** (1)(a) The code commissioner is
4 instructed to renumber the following sections into Title 41, chapter 5, part 1: 41-5-207, 41-5-525,
5 41-5-526, 41-5-527, 41-5-528, 41-5-529, 41-5-530.

6 (b) The code commissioner is instructed to renumber the following sections into Title 41, chapter
7 5, part 2: 41-5-603, 41-5-604, 41-5-605.

8 (c) The code commissioner is instructed to renumber sections in Title 41, chapter 5, part 3, to
9 achieve a logical sequence.

10 (d) The code commissioner is instructed to renumber the following sections into Title 41, chapter
11 5, part 12: 41-5-301, 41-5-304.

12 (e) The code commissioner is instructed to renumber the following sections into Title 41, chapter
13 5, part 13: 41-5-401, 41-5-402, 41-5-403.

14 (f) The code commissioner is instructed to renumber the following sections into Title 41, chapter
15 5, part 14: 41-5-202, 41-5-501, 41-5-502, 41-5-503, 41-5-511, 41-5-512, 41-5-513, 41-5-514,
16 41-5-515, 41-5-524, 41-5-531, 41-5-532.

17 (g) The code commissioner is instructed to renumber the following sections into Title 41, chapter
18 5, part 15: 41-5-521, 41-5-522, 41-5-523, 41-5-533.

19 (h) The code commissioner is instructed to renumber the following sections into Title 41, chapter
20 5, part 16: 41-5-1101, 41-5-1102, 41-5-1103, 41-5-1104, 41-5-1105.

21 (i) The code commissioner is instructed to renumber the following sections into Title 41, chapter
22 5, part 17: 41-5-701, 41-5-702, 41-5-703, 41-5-704, 41-5-705, 41-5-706.

23 (j) The code commissioner is instructed to renumber the following sections into Title 41, chapter
24 5, part 18: 41-5-802, 41-5-809, 41-5-810, 41-5-811, 41-5-812, 41-5-813, 41-5-814.

25 (k) The code commissioner is instructed to renumber the following sections into Title 41, chapter
26 5, part 19: 41-5-1001, 41-5-1002, 41-5-1003, 41-5-1004, 41-5-1005, 41-5-1006, 41-5-1007,
27 41-5-1008.

28 (2) The code commissioner is instructed to implement 1-11-101(2)(g)(ii) by correcting any clearly
29 inaccurate references to or in sections of the Montana Code Annotated caused by the renumbering required
30 by this section, including material enacted by the 55th legislature.

1 **NEW SECTION. Section 48. Codification instruction.** (1) [Sections 12 through 14, 16, and 18
2 through 21] are intended to be codified as an integral part of Title 41, chapter 5, part 3, and the provisions
3 of Title 41, chapter 5, part 3, apply to [sections 12 through 14, 16, and 18 through 21].

4 (2) [Sections 6 through 8] are intended to be codified as an integral part of Title 41, chapter 5, part
5 12, and the provisions of Title 41, chapter 5, part 12, apply to [sections 6 through 8].

6 (3) [Section 9] is intended to be codified as an integral part of Title 41, chapter 5, part 13, and the
7 provisions of Title 41, chapter 5, part 13, apply to [section 9].

8 (4) [Section 10] is intended to be codified as an integral part of Title 41, chapter 5, part 14, and
9 the provisions of Title 41, chapter 5, part 14, apply to [section 10].

10 (5) [Sections 29 through 37] are intended to be codified as an integral part of Title 41, chapter 5,
11 part 15, and the provisions of Title 41, chapter 5, part 15, apply to [sections 29 through 37].
12

13 **NEW SECTION. Section 49. Coordination instruction.** (1) If ___ Bill No. ___ [LC 224] is passed
14 and approved and if it includes a section that amends 41-5-523(3)(b), then the code commissioner is
15 instructed to compile the two provisions to retain the structure of [this act] and the substantive changes
16 of ___ Bill No. ___ [LC 224].

17 (2) If ___ Bill No. ___ [LC 222] is passed and approved and if it includes a section that amends
18 41-5-523(2)(b), then the code commissioner is instructed to compile the two provisions to retain the
19 structure of [this act] and the substantive changes of ___ Bill No. ___ [LC 222].
20

21 **NEW SECTION. Section 50. Saving clause.** [This act] does not affect rights and duties that
22 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
23 act].
24

25 **NEW SECTION. Section 51. Applicability.** [This act] applies to proceedings commenced after [the
26 effective date of this act].
27

-END-

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

SELECT COMMITTEE ON CORRECTIONS

Call to Order: By CHAIRMAN BERGSAGEL, on January 15, 1997, at 3:14 p.m., in Room 325.

ROLL CALL

Members Present:

Rep. Ernest Bergsagel, Chairman (R)
Rep. William T. "Red" Menahan, Vice Chairman (D)
Rep. Gary Feland (R)
Rep. Betty Lou Kasten (R)
Rep. Matt McCann (D)
Rep. Daniel W. McGee (R)
Rep. Steve Vick (R)
Rep. Diana E. Wyatt (D)

Members Excused: Royal C. Johnson (R)

Members Absent: None

Staff Present: Susan Fox, Legislative Services Division
Mike Wingard, Legislative Audit Division
Skip Culver, Legislative Fiscal Division
Meg Angell, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 114 (1/7/97)
Executive Action: None

HEARING ON JUVENILE JUSTICE AND MENTAL HEALTH STUDY COMMISSION

**SEN. MIKE HALLIGAN, Juvenile Justice and Mental Health Study
Commission** **EXHIBIT 1**
{Tape: 1; Side: A; Approx. Time Count: 1.1; Comments: Overview.}

QUESTIONS:

REP. "RED" MENAHAN

{Tape: 1; Side: A; Approx. Time Count: 18.7; Comments: Rep. Menahan questioned Sen. Halligan.}

REP. DIANA WYATT

{Tape: 1; Side: A; Approx. Time Count: 20.3; Comments: Rep. Wyatt questioned Sen. Halligan.}

CHAIRMAN ERNEST BERGSAGEL

{Tape: 1; Side: A; Approx. Time Count: 24.2; Comments: Conclusion.}

HEARING ON HB 114

Sponsor: REP. LINDA MCCULLOCH, HD 70, introduced the bill.

{Tape: 1; Side: A; Approx. Time Count: 24.9.}

CHAIRMAN ERNEST BERGSAGEL

{Tape: 1; Side: A; Approx. Time Count: 30.3; Comments: Chairman Bergsagel questioned Rep. McCulloch.}

Proponents:

CANDY WIMMER, Montana Board of Crime Control

{Tape: 1; Side: B; Approx. Time Count: .3.}

LOIS ADAMS, Department of Corrections

EXHIBIT 2

{Tape: 1; Side: B; Approx. Time Count: 1.3.}

MARY ELLERD, Executive Secretary, Juvenile Probation Officers' Association

EXHIBIT 3

{Tape: 1; Side: b; Approx. Time Count: 2.8.}

Opponents:

NONE

QUESTIONS:

REP. MATT MCCANN

{Tape: 1; Side: B; Approx. Time Count: 4.3; Comments: Rep. McCann questioned Rep. McCulloch.}

CHAIRMAN ERNEST BERGSAGEL

{Tape: 1; Side: B; Approx. Time Count: 6.0; Comments: Chairman Bergsagel questioned Rep. McCulloch.}

REP. DAN MCGEE

{Tape: 1; Side: B; Approx. Time Count: 6.5; Comments: Rep. McGee questioned Rep. McCulloch.}

REP. BETTY LOU KASTEN

{Tape: 1; Side: B; Approx. Time Count: 7.7; Comments: Rep. Kasten questioned Susan Fox and Chairman Bergsagel.}

REP. GARY FELAND

{Tape: 1; Side: B; Approx. Time Count: 11.8; Comments: Rep. Feland questioned Chairman Bergsagel.}

CHAIRMAN ERNEST BERGSAGEL

HOUSE SELECT CORRECTIONS COMMITTEE

January 15, 1997

Page 3 of 4

{Tape: 1; Side: B; Approx. Time Count: 13.4; Comments:
Conclusion.}

HOUSE OF REPRESENTATIVES

House Select COMMITTEE ON CORRECTIONS

ROLL CALL

DATE.

1/15/97

[illegible]

JUVENILE JUSTICE AND MENTAL HEALTH STUDY COMMISSION

OVERVIEW: WHY COMPREHENSIVE JUVENILE JUSTICE?

The juvenile court system has been around for a hundred years. Today, states are reacting to the public's belief that nothing works and are scrutinizing youth courts - 47 of 50 states are currently or have recently revised their Youth Court Codes.

Youth courts operate from the philosophy of *Parens Patriae* which espouses that the state has an obligation to intervene in the life of a young person when parental authority is unable to control the youth's behavior. It seeks to address the cause of problems and to treat the cause with the hope of rehabilitation. Goals of a juvenile justice system should revolve around (1) public safety; (2) accountability to the victim and to society; and (3) punishment that builds competency or skills.

Adult courts operate with a philosophy of just desserts - do the crime; do the time.

The Juvenile Justice and Mental Health Study Commission was created recognizing the current practice of youth courts was not working but sought to make changes that would create a more efficient system rather than throwing out the entire system.

Findings from a National perspective were confirmed in the process of public hearings throughout the state:

Generally speaking, the Commission found that the juvenile justice system was:

1. Slow to respond - court calendars and lack of resources mean youth wait for dispositions for an undue amount of time.
2. Hard to access and to understand by everyone involved with the system.
3. Not coordinated - causing duplication of effort from agencies and frustration for those families seeking help in controlling their children's behavior.
4. There is not a system of graduated sanctions which offer an opportunity to hold youth properly accountable for the illegal behavior he or she has committed.
5. Victims were not recognized and were frequently neglected by the system.

Therefore, the Commission has brought before this session a package of bills which seek to address the deficiencies of the current system and to strengthen the parts of the system we believe work well.

PREVENTION AND EARLY INTERVENTION:

"...recent research suggests that delinquency can be significantly reduced if problems known to contribute to juvenile crime are identified and addressed much earlier in a child's life. Programs need to start early, be comprehensive and be made available on a long-term basis."

" Research has identified certain problems, or risk factors, that can predict future criminality. Risk factors include: truancy, poor academic performance, dysfunctional family, alcohol and drug abuse, and criminal behavior to name a few. The negative impact of risk factors are cumulative - the more risk factors present, the more vulnerable a child is to future criminal involvement."

- ▶ The Commission recommended that the legislature amend "youth in need of supervision" to "youth in need of intervention" and to include in that definition, habitual truants and runaways. The intent is to address the behavior of the youth from the earliest point and address the youth's needs from all fronts, especially for status and first-time offenders.
- ▶ To assist in identifying the needs and the strengths of juveniles identified as the youth in need of intervention, Judicial districts can utilize an assessment officer to do a preliminary investigation into the youth's and the youth's family's circumstances. The assessment officer or probation officer can use that information to proceed using the traditional tools in Youth Court.
- ▶ Or order a multi disciplinary assessment for up to ten days through a youth assessment placement to be conducted either in a youth assessment center or in any of a variety of other settings to include the youth's own home.

The evaluation serves numerous purposes:

- ▶ First, the placement itself can be an **immediate consequence** of a youth's actions and may be enough to start better communications and allow a family to solve their own issues.
- ▶ Second, it **simplifies access** to the system by providing a single point-of-entry into a system of multiple local and state agencies for the youth, whose circumstances may be evaluated by all of the agencies that may have dealings with the youth.
- ▶ Third, it provides **better communication and coordination** between the variety of agencies who may be involved with a youth or the youth's family. Schools, child protective services, juvenile probation, and mental health are

called in as the need arises to evaluate what may be going on in a youth's life and what may be best to address the youth's behavior.

The Commission has recommended a pilot project for two judicial districts to try the single-point-of-entry and assessment placement concept. These concepts are included in the "youth in need of intervention" bill, but are only an additional tool without more requirements or funding provided. The pilot project would require some additional collaboration at the judicial district level and, if the proposal can be funded, provide some funding for the Youth Court to hire an assessment officer.

To help address the timeliness of response to a youth's behavior, the pilot project concept also includes authorizing special masters or judges pro tempore to assist Youth Court Judges with preliminary matters so that the youth receives immediate consequences for the youth's actions and the workload for the Youth Court Judge is more manageable.

The Commission heard testimony that many parents and probation officers were frustrated with the lack of methods to deal with status offenders or youth that commit offenses that are offenses because of their age, such as truants, minors in possession of alcohol, and runaways. An example of how this assessment process would work is as follows:

"A parent calls in to the Youth Court to **refer** their child who has run away from home. The assessment officer would **investigate** and make a decision on what would be the best way to handle the youth. For purposes of example, the assessment officer has found out that the youth has had numerous minor in possession charges in Justice Court, all of which seemed to have begun since the beginning of the school year, and the youth has one other sibling who is having trouble in school as well. An assessment team meets, composed of a school representative who is familiar with the youth, a representative from the mental health center, a representative from DPHHS or other relevant agencies. The referred youth is **determined to need a youth assessment placement** as an immediate consequence for the youth's behavior, to give the family a chance to stabilize, for the youth to receive a chemical dependency screening, and for the parent and other members of the family to participate in a family conference. The assessment officer schedules a **probable cause hearing**, and the court places the youth in a youth assessment placement. The appropriate agencies commit to providing the resources necessary to address the youth's needs. Once the **placement and the assessment** is complete, the assessment officer determines what the appropriate **disposition** is for the youth. In this case, the youth is placed on probation through an informal adjustment. The assessment revealed that their was a

family crisis that had been unfolding and it was really an issue that the family was committed to resolving together. The youth probation requires the youth to receive family counseling, for which the parents have agreed to participate and are able to contribute to the costs. Other alternatives could have been a foster care placement or chemical dependency treatment, but resolution of the family issue may be all that the youth needed. If this doesn't work, a consent adjustment with a petition could be used with additional sanctions applied, including a requirement for chemical dependency treatment."

To further enhance the collaboration between schools, social service agencies, juvenile justice agencies, and courts the Commission made three specific recommendations:

- ▶ First, that school records must be sent to the school receiving the youth upon written request, **within 5 working days**. Right now, schools do not forward records in a timely manner, or schools hold records until fines or fees are paid. This causes the receiving school district to play catch up in identifying education or special education needs or in heading off problem behavior that was likely experienced before.
- ▶ Second, special education funds have not been able to be accessed immediately for use by the teacher for special education programs. The Commission recommended that the funds be available for special education costs for the year in which the student changes districts. This should alleviate some of the hardship to the receiving school.
- ▶ Third, the Commission has recommended changes in the **confidentiality** laws to strengthen the information-sharing provisions so that information is able to be shared among all of the many agencies that deal with youth. This information is protected from abuse, but allows the major players to access information or at least know if information exists elsewhere. This includes allowing schools to access confidential agency information and to participate on a decision-making team by a school representative that knows the youth.

GRADUATED SANCTIONS

"In comprehensive juvenile justice, a system of graduated sanctions holds young people accountable for their actions every step of the way - from the least to the most serious patterns of offending - while maintaining public safety. It provides swift and sure punishment when a youngster first commits a crime followed by progressively tougher sanctions if he or she continues to offend."

1. I have already described many of the provisions recommended by the

Commission in addressing youth early in their criminal behavior. The Commission's recommendation of the youth in need of intervention concept provides for graduated sanctions by adding a tool at the beginning of the range of sanctions: assessment officers and programs. The assessment will more accurately identify the areas of a youth and a youth's family needing strengthening and intervention and would typically be handled through an informal adjustment without petition. An informal consent adjustment must be agreed to by all parties, including the youth's family and can be used to make the youth accountable for the youth's actions.

The Commission also recommends that, in order to be able to use the informal proceedings, the youth must admit to the offenses and take personal responsibility. If they refuse to admit, the level of seriousness of the proceeding increases.

2. In addressing youth committing more serious offenses, the Commission recommended that if youth are committing felony crimes, two different informal proceedings may be used only once each and if the youth continues the behavior, it will lead the youth directly to more formal delinquency proceedings in which a court order may be issued.

3. The Commission's recommendations provide that violation of a valid court order is sufficient to return a youth to Youth Court to face tougher sanctions, including detention.

4. The Commission recommended allowing a deferred imposition of a disposition for a 45-day placement evaluation at an appropriate program or facility. (Status offenders cannot be placed at Pine Hills for an evaluation). This is an additional disposition under 41-5-523, and parents may have to pay associated costs depending on their financial ability to pay.

JUVENILE DETENTION AND CORRECTIONS

"A system of comprehensive juvenile justice serves the dual purpose of protecting the public and preventing serious juvenile crime."

"Strengthening and defining the appropriate use of juvenile incarceration is important if the juvenile justice system is to serve both purposes effectively."

In recognizing that a very few juveniles commit the majority of very serious offenses and that for those few juveniles, secure care is necessary, the Commission recommended:

- ▶ That short-term detention facilities be allowed to hold youth for up to 10 days from 96 hours. This provision should reduce the need to transport youth back and forth from Regional detention facilities to court hearings during the preadjudicatory period in which a youth is being held.

- ▶ That through a formal consent decree, the court may require a disposition (post-adjudication) of detention for up to 10 days, and through an informal consent adjustment may require a disposition of detention for up to 3 days.
NOTE: This detention is separate from and in addition to the 10 days possible for assessment mentioned above.
- ▶ That juveniles convicted of certain sexual offenses be required to register as sexual offenders and that juveniles transferred to the Dept. of Corrections for disposition as a sexual offender be required to complete treatment prior to being released.

The Commission monitored the transition of juvenile corrections from the Department of Family Services to the Department of Corrections, but did not act on any Department of Corrections recommendations.

1. The Commission expressed a concern for a continuum of care for juvenile sex offenders, that they be treated in the community if possible and that alternatives should be explored as the Department of Corrections is looking to develop a sex offender treatment program at Pine Hills School.

TREATING JUVENILES LIKE ADULTS

"Currently, there are statutory tools to treat youths as adults if they are in fact committing serious felony offenses in an adult manner. It must be remembered that Youth Court is a civil process, and that if criminal proceedings are needed, the youth must be transferred to District Court."

There is a recent District Court decision regarding the constitutionality of some of these procedures, and the question is awaiting a Supreme Court hearing. The Commission made recommendations to respond to the question of constitutionality and address problems in:

- 1) the transfer of a youth to District Court prior to prosecution in Youth Court;

A controversial recommendation by the Commission and one that received a lot of discussion is whether the County Attorney should be allowed to ask the Youth Court Judge for permission to file a petition directly in District Court (which would trigger criminal proceedings) if the youth meets a minimum age requirement and has committed certain very serious offenses. There is a transfer provision in current statute, but the requirements have the effect of making the prosecutor, in practice have to try the case in a transfer hearing, which may compromise future proceedings. This transfer takes place

prior to prosecution in Youth Court, and if the transfer is granted, ends Youth Court jurisdiction.

2) the transfer to District Court after prosecution in Youth Court; and

This recommendation is separate from extended jurisdiction below, but was a related issue in the Barz decision. (The substantive amendments to this section will be made under SB 99 and will be amended out of SB 48.)

3) the extended Jurisdiction Prosecution Act.

Extended Jurisdiction under the Youth Court Act allows a Judge to have jurisdiction over a youth until age 25 to complete their sentences imposed under Youth Court, and provides for disposition alternatives that are equivalent to those imposed under District Court (adult criminal sentences). These provisions can be triggered depending on the age of the youth and the offense committed.

- ▶ The Commission also recommended that accountability be added to the list of offenses for which a youth may be transferred to District Court prior to prosecution. Accountability is holding a person liable for an act committed by or for another person.
- ▶ The Commission recommended that a Judge may require successful completion of sex offender treatment before the youth is discharged from jurisdiction of the Youth Court. If treatment is not completed, the judge may transfer the youth's jurisdiction to the District Court after prosecution.

Finally, the Commission recommended that the same due process rights as adults be clarified in the Youth Court Act (in keeping with the Montana Constitution.)

MISCELLANEOUS

1. The Commission recommended that the statutory language regarding victims that was passed in the last session, be clarified so that it applies in Youth Court Act proceedings. This section of law was codified under the criminal statutes and has not been used in Youth Court to any extent by the District Courts. The proposal will codify the language into the Youth Court Act.

2. The Commission made recommendations to require that parents who are financially able be held responsible for some of the financial costs of youth placements and treatment, legal proceedings in Youth Court, and victim's counseling costs.

3. The Commission endorsed other agency proposals for funding for alcohol and drug treatment of adolescents, funds for schools for conduct-disordered pupils, although those agency proposals have not been forwarded to the Legislature.

4. The Commission recommended a review of the rate matrix and regulations for private providers, such as foster care, therapeutic foster care, and other residential placements. These providers have received minimal cost-of-living rate increases in the past and **without the ability to charge sufficient rates, providers will not be able to stay in business and if these private providers do not exist, then the concept of treating youth in the community in the least restrictive and least costly environments possible will not work.** Not all youth need a high level of secure residential care, such as Pine Hills School, and these private providers are a large and vital part of Youth Court placements. Also, some of the regulations and requirements, such as staff-to-youth ratios, should be reviewed and compared to other states so that Montana is allowing the providers sufficient flexibility to maintain more efficient and less costly, yet safe and stable, environments for youth.

NOTE ON COSTS: Existing resources may be used more efficiently if services are coordinated in an integrated system which, in turn, may limit the need for "new" money except for that above.

HB 477

MOTION: REP. McGEE MOVED HB 477 DO PASS

{Tape: 2; Side: B; Approx. Time Count: 4.7.}

DISCUSSION

MOTION: REP. McGEE MOVED COORDINATION INSTRUCTIONS ON HB 477 TO CONFORM WITH SB 48.

{Tape: 2; Side: B; Approx. Time Count: 6.3.}

DISCUSSION

VOTE: Motion carried 8-4 with REP. WYATT, SEN. SWYSGOOD, REP. KASTEN and CHAIRMAN BERGSAGEL voting no.

{Tape: 2; Side: B; Approx. Time Count: 8.3.}

MOTION/VOTE: REP. McGEE MOVED HB 477 AS AMENDED. Motion failed 5-7 with REP. FELAND, REP. JOHNSON, REP. McGEE, REP. VICK and SEN. GAGE voting yes.

{Tape: 2; Side: B; Approx. Time Count: 8.9.}

MOTION/VOTE: SEN. SWYSGOOD MOVED HB 477 BE TABLED. Motion carried unanimously.

{Tape: 2; Side: B; Approx. Time Count: 9.7.}

HB 114

EXPLANATION: SUSAN FOX

MOTION: REP. JOHNSON MOVED HB 114 DO PASS.

{Tape: 2; Side: B; Approx. Time Count: 12.1.}

MOTION: REP. JOHNSON MOVED INCLUSION OF THE COORDINATION INSTRUCTIONS TO COMPLY WITH SB 48.

{Tape: 2; Side: B; Approx. Time Count: 12.2.}

DISCUSSION

VOTE: Motion carried 11-1 with SEN. SWYSGOOD voting no.

{Tape: 2; Side: B; Approx. Time Count: 12.8.}

FURTHER DISCUSSION OF HB 114 AS AMENDED

VOTE: Motion carried 9-3 with REP. WYATT, SEN. SWYSGOOD and SEN. GAGE voting no.

{Tape: 2; Side: B; Approx. Time Count: 14.8.}

HB 113

MOTION: REP. McCANN MOVED HB 113 DO PASS.

{Tape: 2; Side: B; Approx. Time Count: 15.4.}

EXPLANATION OF COORDINATION AMENDMENTS WITH SB 48.



HOUSE STANDING COMMITTEE REPORT

March 12, 1997

Page 1 of 8

Mr. Speaker: We, the committee on Select Committee on Corrections report that House Bill 114 (first reading copy -- white) do pass as amended.

Signed: _____

Ernest Bergsøgel, Chair

And, that such amendments read:

1. Page 3, line 25 through page 4, line 5.

Strike: subsection (18) in its entirety

Renumber: subsequent subsections

2. Page 38.

Following: line 19

Insert: "(3) If Senate Bill No. 48 and this bill are both passed and approved:

(a) any reference in this bill to [section 29] is void, and the reference must be changed to reflect [section 34] in Senate Bill No. 48 in the second reading copy of the second house;

(b) any reference to [section 35] in this bill is void, and the reference must be changed to reflect [section 41] in Senate Bill No. 48 in the second reading copy of the second house;

(c) any reference to [section 36] in this bill is void, and the reference must be changed to reflect [section 39] in Senate Bill No. 48 in the second reading copy of the second house;

(d) sections amending 41-5-301, 41-5-303, 41-5-305, 41-5-306, and 41-5-530, in Senate Bill No. 48, second reading copy of the second house are void;

(e) sections amending 41-5-403, 41-5-523, 41-5-1004, and 41-5-1104 and [sections 29, 30, 31, 32, 33, 34, 35, 36, 37, and 48(5)] in this bill, first reading copy, are void;

(f) the following sections in this bill must read as follows:

"Section 5. Section 41-5-301, MCA, is amended to read:

"41-5-301. Preliminary investigation and disposition inquiry -- referral of youth in need of care. (1) Whenever the court

Committee Vote:

Yes 9, No 3.

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receives information from ~~any an~~ agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision intervention or, ~~being that the youth is~~ subject to a court order or consent order, ~~and~~ has violated the terms of an order, a probation officer ~~or an~~ assessment officer shall make a preliminary inquiry into the matter.

- ~~(2) The probation officer may:~~
- ~~(a) require the presence of any person relevant to the inquiry;~~
 - ~~(b) request subpoenas from the judge to accomplish this purpose;~~
 - ~~(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.~~
- ~~(3)~~ (2) If the probation officer or assessment officer determines that the facts indicate that the youth is a youth in need of care, the matter must be immediately referred to the department of public health and human services.
- ~~(4) (a) The probation officer in the conduct of the preliminary inquiry shall:~~
- ~~(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;~~
 - ~~(ii) determine whether the matter is within the jurisdiction of the court;~~
 - ~~(iii) determine, if the youth is in detention or shelter care, whether detention or shelter care should be continued based upon criteria set forth in 41-5-305.~~
- ~~(b) Once relevant information is secured, the probation officer shall:~~
- ~~(i) determine whether the interest of the public or the youth requires that further action be taken;~~
 - ~~(ii) terminate the inquiry upon the determination that no further action be taken; and~~
 - ~~(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.~~
- ~~(5) The probation officer upon determining that further action is required may:~~
- ~~(a) provide counseling, refer the youth and the youth's parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;~~
 - ~~(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if~~

~~the probation officer proceeds no further unless authorized by the county attorney, or~~

~~(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.~~

~~(6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.~~

~~(7) A petition charging a youth held in detention must be filed within 7 working days from the date the youth was first taken into custody or the petition must be dismissed and the youth released unless good cause is shown to further detain the youth.~~

~~(8) If a petition is not filed under this section, the complainant and victim, if any, must be informed by the probation officer of the action and the reasons for not filing and must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition is filed."~~

NEW SECTION. Section 6. Preliminary inquiry -- procedure - youth assessment. (1) In conducting a preliminary inquiry under 41-5-301, the probation officer or assessment officer shall:

(a) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(b) determine whether the matter is within the jurisdiction of the court;

(c) determine, if the youth is in detention, a youth assessment center, or shelter care, whether detention, placement in a youth assessment center, or shelter care should be continued or modified based upon criteria set forth in 41-5-305, [section 16], and [section 47].

(2) In conducting a preliminary inquiry, the probation officer or assessment officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local

agency;

- (d) perform a youth assessment pursuant to [section 46].
- (3) The probation officer or assessment officer shall collect the following information regarding a youth:
 - (a) biographical data;
 - (b) a description of prior and current offenses, including criminal history;
 - (c) a listing of known or suspected associates;
 - (d) any gang or drug involvement;
 - (e) field investigation data;
 - (f) motor vehicle ownership and offense data, if any;
 - (g) whether the youth is a suspect in other criminal investigations;
 - (h) history of any victimization of others by the youth;
 - (i) the youth's status offense history;
 - (j) existence of active warrants;
 - (k) school, employment, and family histories;
 - (l) social and medical services histories;
 - (m) prior conduct in a youth detention or correctional facility, if any.

NEW SECTION. Section 7. Preliminary inquiry -- determinations -- release. Once relevant information is secured after a preliminary inquiry under 41-5-301, the probation officer or assessment officer shall:

- (1) determine whether the interest of the public or the youth requires that further action be taken;
- (2) terminate the inquiry upon the determination that no further action be taken; and
- (3) release the youth immediately upon the determination that the filing of a petition is not authorized.

NEW SECTION. Section 8. Preliminary inquiry -- dispositions available to probation officer. Upon determining that further action is required after a preliminary inquiry under 41-5-301, the probation officer or assessment officer may:

- (1) arrange informal disposition as provided in [section 9]; or
- (2) refer the matter to the county attorney for filing a petition in youth court charging the youth to be a delinquent youth or a youth in need of intervention or for filing an information in the district court as provided in 41-5-206.

NEW SECTION. Section 9. Informal disposition. After a preliminary inquiry under 41-5-301, the probation officer or assessment officer upon determining that further action is required and that referral to the county attorney is not required may:

(1) provide counseling, refer the youth and the youth's family to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention; or

(2) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the probation officer or assessment officer proceeds no further unless authorized by the county attorney.

NEW SECTION. Section 10. Petition -- county attorney -- procedure -- release from custody. (1) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of intervention. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(2) A petition charging a youth who is held in detention or a youth assessment center must be filed within 7 working days from the date the youth was first taken into custody or the petition must be dismissed and the youth released unless good cause is shown to further detain the youth.

(3) If a petition is not filed under this section, the complainant and victim, if any, must be informed by the probation officer or assessment officer of the action and the reasons for not filing and must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer or assessment officer, and make the final decision as to whether a petition is filed.

NEW SECTION. Section 14. Custody -- hearing for probable cause -- determinations -- detention -- release. (1) If, at a probable cause hearing held pursuant to [section 12], it is determined that there is probable cause to believe that the youth is a delinquent youth or a youth in need of intervention, the court having jurisdiction in the case shall determine whether the youth should be retained in custody. If the court determines that continued custody of the youth is necessary and if the youth meets the criteria in 41-5-305, [section 16], or [section 47], the youth may be placed in a detention facility, a youth assessment center, or a shelter care facility as provided in [sections 18 through 21] but may not be placed in a jail or other facility used for the confinement of adults accused or convicted of criminal offenses.

(2) If probable cause is not found or if a probable cause hearing is not held within the time specified in [section 12], the youth must be immediately released from custody.

Section 17. Section 41-5-306, MCA, is amended to read:

"41-5-306. Place of shelter care or detention Limitation on placement of youth in need of care. (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:

~~(a) in a licensed youth foster home as defined in 41-3-1102;~~

~~(b) in a facility operated by a licensed child welfare agency;~~

~~(c) in a licensed youth group home as defined in 41-3-1102;~~
or

~~(d) under home arrest, either in the youth's own home or in one of the facilities described in subsections (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10.~~

(2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in subsection (1) by the department of public health and human services as provided in Title 41, chapter 3, and may not be placed in a youth assessment center, youth detention facility, jail, or other facility intended or used for the confinement of adults accused or convicted of criminal offenses.

~~(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only:~~

~~(a) in the facilities described in subsection (1);~~

~~(b) under home arrest as provided in subsection (1);~~

~~(c) in a short term detention center;~~

~~(d) in a youth detention facility; or~~

~~(e) in a community youth court program."~~

NEW SECTION. Section 20. Place of shelter care. Placement in shelter care means placement in one of the following:

(1) in a licensed youth care facility as defined in 41-3-1102; or

(2) under home arrest, with or without a monitoring device, as provided in Title 46, chapter 18, part 10, either in the youth's own home or in a facility described in subsection (1).

(3) All money in the account, except any amount required to be returned to federal or county sources, is allocated to the department of public health and human services to carry out its duties under 52-1-103."

Section 40. Section 41-5-530, MCA, is amended to read:

"41-5-530. Parental contributions account -- allocation of proceeds. (1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under 41-3-406, ~~41-5-403, 41-5-523~~ [section 35 41 of Senate Bill No. 48, second reading copy of the second house], or 41-5-524 must be deposited in the account."

(g) This section must be placed in House Bill No. 114 and is intended to be codified in Title 41, chapter 5, part 12, and the provisions of Title 41, chapter 5, part 12, apply to this section:

"NEW SECTION. Section 46. Preliminary inquiry -- youth assessment. (1) The probation officer or assessment officer may perform a youth assessment if:

(a) a youth has been referred to the youth court as an alleged youth in need of intervention with a minimum of two misdemeanor offenses or three offenses that would not be offenses if the youth were an adult in the past year; or

(b) the youth or the youth's parent or guardian requests the youth assessment and both the youth and the parent or guardian are willing to cooperate with the assessment process.

(2) A youth assessment:

(a) must be a multidisciplinary effort that may include, but is not limited to a chemical dependency evaluation of the youth, an educational assessment of the youth, an evaluation to determine if the youth has mental health needs, or an assessment of the need for any family-based services or other services provided by the department of public health and human services or other state and local agencies. The education component of the youth assessment is intended to address attendance, behavior, and performance issues of the youth. The education component is not intended to interfere with the right to attend a nonpublic or home school that complies with 20-5-109.

(b) must include a summary of the family's strengths and needs as they relate to addressing the youth's behavior;

(c) may occur in a youth's home, with or without electronic monitoring, or pursuant to 41-5-305 in a youth assessment center licensed by the department of public health and human services or in any other entity licensed by the department of public health and human services. The county shall provide adequate security in other licensed entities through provision of additional staff or electronic monitoring. The staff provided by the county must meet licensing requirements applicable to the licensed entity in which the youth is being held.

(3) The assessment officer arranging the youth assessment shall work with the parent or guardian of the youth to coordinate

the performance of the various parts of the assessment with any providers that may already be working with the family or providers that are chosen by the family to the extent possible to meet the goals of the Youth Court Act."

(h) This section must be placed in House Bill No. 114 and is intended to be codified in Title 41, chapter 5, part 3, and the provisions of Title 41, chapter 5, part 3, apply to this section:

"NEW SECTION. Section 47. Criteria for placement of youth in youth assessment centers. A youth may be placed in a youth assessment center only if:

(1) the youth meets the requirements for placement in shelter care;

(2) the youth has not committed an act that would be a felony offense if committed by an adult;

(3) the youth needs an alternative, staff-secured site for evaluation and assessment of the youth's need for services;

(4) the youth needs to be held accountable for the youth's actions with structured programming; and

(5) the youth meets qualifications as outlined by the placement guidelines that are determined by the department and coordinated with the guidelines used by the youth placement committees."

(i) This section must be placed in House Bill No. 114:

"NEW SECTION. Section 50. Code commissioner instruction.

(1) Wherever a reference to "an aftercare agreement" appears in House Bill No. 114, the code commissioner is directed to change it to an appropriate reference to "a parole agreement".

(2) References to "an aftercare agreement" that are contained in Title 41, chapter 5, in material enacted by the 55th legislature must be changed to "a parole agreement"."

-END-

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE & CLAIMS

Call to Order: By CHAIRMAN CHUCK SWYSGOOD, on March 20, 1997, at 8:05 a.m., in Room 108.

ROLL CALL

Members Present:

Sen. Charles "Chuck" Swysgood, Chairman (R)
Sen. Thomas F. Keating, Vice Chairman (R)
Sen. Larry Baer (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. James H. "Jim" Burnett (R)
Sen. B.F. "Chris" Christiaens (D)
Sen. Eve Franklin (D)
Sen. Loren Jenkins (R)
Sen. Greg Jergeson (D)
Sen. John "J.D." Lynch (D)
Sen. Dale Mahlum (R)
Sen. Ken Miller (R)
Sen. Arnie A. Mohl (R)
Sen. Linda J. Nelson (D)
Sen. Mike Taylor (R)
Sen. Daryl Toews (R)
Sen. Mignon Waterman (D)

Members Excused: None

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Division
Sharon Cummings, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 114, 3/14/97; HB 136,
3/14/97
Executive Action: HB 125, BCCAA; HB 102, BCCAA;
HB 405, Tabled; SB 374, Failed

HEARING ON HB 114

Sponsor: REP. LINDA MCCULLOCH, HD 70, MISSOULA

Proponents: Mary Alice Cook, Children and Family Lobby

Opponents: None

Opening Statement by Sponsor:

REP. LINDA MCCULLOCH, HD 70, MISSOULA HB 114 is a product of the interim committee on juvenile justice. This bill reorganizes, restructures, updates and recodified existing law. It makes the Youth Court Act more readable, understandable and useable. REP. MCCULLOCH explains the bill.

Proponents' Testimony:

Mary Alice Cook, Children and Family Lobby I strongly support this bill.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. MCCULLOCH Thank you.

{Tape: 1; Side: A; Approx. Time Count: 8:12; Comments: None.}

HEARING ON HB 136

Sponsor: REP. BILL WISEMAN, HD 41, GREAT FALLS

Proponents: Mike Ferriter, Department of Corrections

Opponents: None

Opening Statement by Sponsor:

REP. BILL WISEMAN, HD 41, GREAT FALLS HB 136 is to finance additional pre-release centers. REP. WISEMAN gives a brief description and history of pre-release centers in Montana. In 1983 the Department of Corrections (DOC) came to Great Falls to ask them to build a pre-release center. The people of Great Falls organized a non-profit organization that renovated a building and created a pre-release center. This facility was expanded approximately 5 years ago. A couple of years ago a women's pre-release center was built in Great Falls. Billings needs to expand their pre-release center and they cannot get the lending institutions to talk to them. Missoula is running into the same problem. This bill proposes to go through the Board of Investments to organize a new lending authority so non-profits could borrow money with tax free municipal bonds. The select committee on corrections changed this bill to have these non-profits under the Montana Health Authority instead of creating a new lending authority. REP. WISEMAN gave a brief description of the Montana Health Authority. We want to borrow the money as cheaply as we can to loan it to the non-profit pre-release

**MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE**

ROLL CALL

DATE

3/20/97

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future contract. I don't think that can be shown after the decision in Virginia which happened a month after the Governor received his letter. Let's not confuse facts with suppositions. We should not leap haphazardly into this. We can work with everyone involved to come up with a solution to this problem without being threatened by the federal government. There is no urgency to do this right now. To change our position on this would be an abdication of the power of the legislature to the executive. A lot of people already suspect and allege that and I don't want to give credence to that allegation. Let's negotiate the terms before agreeing to the contract.

CHAIRMAN SWYSGOOD I hate this bill with a passion but I don't think the 17 of us should make this determination. This is a bill that the full body of the Senate needs to discuss. I'm going to vote for this bill to get it on to the floor and I hope the problems we are having with this bill get back to Washington. This is not right. We've made tremendous strides and saved considerable amounts of money with the bill we passed last session relating to welfare reform. That is working. The federal government could throw their muscle at Montana and a lot of the reform we put in last session could be at jeopardy. I don't know that I will vote for this bill on the Senate floor but I am not going to hold it up in this committee without the full Senate having the opportunity to debate this and hear the problems we are facing.

SEN. LYNCH I think we could come up with the money if this were \$1-2 million. I'm thinking the people who will not be served are the ones who cannot defend themselves. I hate the bill as much as anyone else but I have to make the motion in good conscience.

SEN. JENKINS Why doesn't the Department of Public Health and Human Services and the Governor have more current correspondence on this matter? **MaryAnn Wellbank, DPHHS** We do, we handed the letter dated March 12, 1997 out the last time we were here. They feel the decision does not apply, Title IV-D funding is dependent on these requirements and they reiterated the severity of the consequences to Montana which are approximately \$52 million.

SEN. BAER An erroneous opinion and just an opinion. The court rules otherwise.

Vote: THE MOTION THAT SB 374 DO PASS AS AMENDED CARRIED 11-6 ON ROLL CALL VOTE.

{Tape: 3; Side: B; Approx. Time Count: 11:20; Comments: None.}

EXECUTIVE ACTION ON HB 114

Motion/Vote: SEN. CHRISTIAENS MOVES HB 114 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY. SEN. CHRISTIAENS will carry HB 114.